

## **CHAPTER 20.63**

### **FLOOR AREA RATIOS AND BUILDING BULK**

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#### **20.63.010 Effect of Chapter**

The following regulations shall apply to all nonresidential districts.

#### **20.63.020 Purpose**

This chapter is intended to:

- A. Implement provisions of the Land Use Element of the General Plan that establish variable floor area limits depending upon the traffic generating characteristics of the use proposed for the property;
- B. Encourage a variety of land uses within commercial districts, while insuring that traffic generated by new development is consistent with the capacity of streets and highways as specified in the Circulation Element; and
- C. Insure an appropriate mix of land uses within commercial districts which will not overburden the circulation system .
- D. Regulate the visual and physical mass of structures consistent with the unique character and visual scale of the City of Newport Beach.

### **20.63.030 Definitions**

For purposes of this chapter, the following definitions shall apply:

- A. Base Development Allocation. The total square footage of a site or a statistical area multiplied by 0.5.
- B. Base FAR Use. A use which shall be permitted to develop at a floor area ratio of 0.5, and includes those uses specified in Table 20.63.
- C. Building Bulk. The visual and physical mass of a building, calculated in accordance with Section 20.63.060.
- D. Decreased Site. A parcel of land from which development rights are transferred.
- E. Floor Area Ratio (FAR). The ratio of gross floor area of all uses on a site to the total square footage of the site.
- F. Gross Floor Area. For purposes of this chapter, gross floor area shall be defined as the area of a building or portion thereof including the surrounding exterior walls, except that outdoor dining areas utilized in conjunction with an eating and drinking establishment shall also be included.  
  
Any finished portion of a building which measures more than 4 feet from finished floor to ceiling and is accessible shall be included in calculations of gross floor area.  
  
Areas utilized for stair wells and elevator shafts shall be counted towards gross floor area on only the first level.
- G. Increased Site. A parcel of land to which development rights are transferred
- H. Maximum FAR Use. A use which may be permitted to develop up to the maximum floor area ratio as listed in Table 20.63 and as otherwise provided herein.
- I. Maximum Floor Area Ratio. A floor area ratio of 0.75 or 1.0 which may be permitted in certain cases as specified in Section 20.63.040 (B), Section 20.63.040 (C) and the Land Use Element of the General Plan.
- J. Reduced FAR Use. A use which shall be limited to development at a floor area ratio of 0.3 as specified in Table 20.63.
- K. Statistical Area. A geographic planning area defined by the Land Use Element of the General Plan delineating intensity and/or density limits and major land use policies.

#### 20.63.040 Land Use Intensities

A. The land use intensities for nonresidential uses specified in the Land Use Element of the General Plan shall be implemented as follows:

1. Fixed Designation. Where the Land Use Element of the General Plan specifies a single floor area ratio or square footage limit for a site, all uses permitted within the applicable district shall be permitted to develop up to the floor area ratio or gross floor area limit specified.
2. Variable Floor Area Ratios. Where the Land Use Element of the General Plan specifies variable designations for a site (denoted by a slash), the permitted gross floor area shall vary, and shall be prorated according to the type of use. The base development allocation shall be calculated per Section 20.63.030. The base development allocation shall not be exceeded by the sum of the weighted square footage of each use. Weighted square footage shall be determined by multiplying gross floor area of a given use by the weighting factors below. The area devoted to each type of use shall be weighted as follows:

<u>Use Category</u>	<u>Weighting Factor</u>
Base FAR uses	1.00
Reduced FAR uses	1.67
Maximum FAR uses	0.50

Neither the base development allocation nor the maximum floor area ratio specified in the Land Use Element of the General Plan shall be exceeded, except as provided in Section 20.63.040 (B) below.

B. Exceptions.

1. Existing Buildings. Previously existing buildings may exceed the base development allocation as provided in Section 20.63.050 (B).
2. Planning Director's Approval. The Planning Director may issue a use permit to approve a project which exceeds the base development allocation up to the maximum floor area ratio established for the statistical area in which the project is proposed, upon finding:
  - a. That the mix of existing and approved development within the statistical area in which the project is proposed does not exceed the base development allocation established for that statistical area.

- b. That the statistical area in which the project is proposed does not contain any undeveloped or underdeveloped properties of sufficient size which, if developed within the land use intensities established by the Land Use Element of the General Plan, would cause the base development allocation for that statistical area to be exceeded.

The Planning Director's approval shall expire unless a building permit has been issued and construction has commenced within 24 months from the date of approval.

- 3. Use Permit. Any project which would cause the statistical area in which it is proposed to exceed the base development allocation established by the Land Use Element of the General Plan may only be approved pursuant to the use permit procedures provided in Section 20.63.040 (C).

C. Use Permit to Exceed Base Floor Area Ratio. A use permit may be approved for projects which exceed the base development allocation established for the statistical area for which the project is proposed up to the maximum floor area ratio established for the statistical area.

- 1. Required Findings. In order to approve a use permit for a project to exceed the base development allocation of a statistical area, one or more of the following findings are made:
  - a. The project provides for the consolidation of existing legal lots to provide unified site design.
  - b. The project provides for shared access with adjoining properties to a public right-of-way through common driveways and closes and relinquishes access rights to any other existing driveways.
  - c. The project provides for cross-easements, joint maintenance agreements, and reciprocal parking agreements with adjoining properties to facilitate the shared use of parking areas and to improve internal circulation.
  - d. The project's design and construction preclude land uses with high traffic generating characteristics.
  - e. The project incorporates design characteristics which mitigate any additional traffic generation or parking demand characteristics associated with the increased entitlement or which serve to improve existing traffic circulation or parking conditions.

- f. The project provides infrastructure improvements or dedications beyond what is necessary to serve the project and its population.
  - g. The project incorporates innovative design or construction methods which further the goals of the General Plan.
  - h. A covenant shall be recorded which would bind the current and future property owners to the land uses which will not overburden the circulation system.
- 2. Additional Required Findings. In addition to the findings required above, the following additional findings shall be made:
  - a. The increased development, including above grade covered parking, does not create abrupt changes in scale between the proposed development and development in the surrounding area.
  - b. That the proposed use and structures, including above grade covered parking, are compatible with the surrounding area.
  - c. The increased development, including above grade covered parking, will not result in significant impairment of public views.
  - d. That the site is physically suitable for the development proposed, including above grade covered parking, taking into consideration site characteristics including, but not limited to, slopes, submerged areas, and sensitive resources.
- D. Utilities and Mechanical Equipment. The Planning Director may exclude utility and mechanical equipment rooms, totaling up to 10 percent of the gross floor area, from the calculation of the floor area ratio when it is clearly demonstrated that such areas do not contribute to the traffic generation potential of the property.
- E. Mixed Commercial/Residential Development. Where second floor residential development is permitted in conjunction with a first floor commercial use, the total floor area ratio of 1.25 shall be permitted, provided that the floor area ratio for commercial development does not exceed 0.5 nor exceeds the base development allocation for commercial uses. In addition, the floor area ratio for commercial development shall not be less than 0.25 unless a use permit is approved, and the Planning Commission makes the following findings in addition to those use permit findings required under Section 20.91.035 (A):
  - 1. That the proposed commercial space constitutes a significant portion of the project.

2. That the proposed commercial space is large enough to accommodate a viable business.

The number of dwelling units permitted in a mixed commercial/residential development shall be as specified in the Land Use Element of the General Plan.

#### **20.63.050 Conversion of Use**

- A. Conversion of Uses in Existing Buildings. Conversion of a Maximum FAR use to a Base FAR use or to a Reduced FAR use, or conversion of a Base FAR use to a Reduced FAR use in an existing structure may be permitted provided that the base development allocation will not be exceeded. For mixed nonresidential uses, the ratios established in Section 20.63.040 (E) shall apply.
- B. Conversion of Uses in Buildings Constructed Prior to October 25, 1988. Lawfully existing uses in buildings constructed prior to October 25, 1988 may continue, notwithstanding the provisions of this chapter. Conversion of a Maximum FAR use to a Base FAR use or to a Reduced FAR use, or conversion of a Base FAR use to a Reduced FAR use such that the base development allocation will be exceeded, may be permitted upon the approval of a use permit by the Planning Commission subject to all of the following findings in addition to those findings required in accordance with Section 20.91.035 (A):
  1. It has been demonstrated that the peak hour traffic to be generated by the proposed uses will not exceed that generated by the existing uses in the development, as determined in accordance with City Council Policy L-18.
  2. The projections of traffic to be generated utilize standard traffic generation rates generally applied to a use of the type proposed, per City Council Policy L-18.

3. The structures on the site were constructed prior to October 25, 1988, consistent with the policies and ordinances in effect at the time of construction.
4. The building tenants would be restricted to the uses and operational characteristics upon which the traffic equivalency was based. Relevant operational characteristics include, but are not limited to, hours of operation of onsite businesses, provision of valet parking, off-site parking, and net public area of restaurants.
5. The proposed use and physical improvements are such that the approved project would not readily lend itself to conversion to a higher traffic generating use.
6. The proposed uses are compatible with the surrounding area.

In cases where a Reduced FAR use is converted to a Base FAR use or Maximum FAR use, or a Base FAR use is converted to a Maximum FAR use, no credit for future increases in floor area ratio shall be given. Mixed nonresidential uses shall be governed by the provisions of Section 20.63.040 (E).

#### **20.63.060 Building Bulk**

Building bulk shall be calculated to be gross floor area excluding outdoor dining areas and with the addition of courtyards not open on at least 2 sides. An area which is open to the sky and is open on one side shall be considered to be consistent with this provision.

In addition, for purposes of calculating building bulk, the floor area devoted to portions of a building which span more than 1 floor, such as multi-level lobbies, stairwells, and elevator shafts shall be counted at each floor level. Any level of a building which measures more than 18 feet from finished floor to finished floor level or from finished floor to the average height of the roof above finished floor, shall be considered to occupy 2 floor levels.

Building bulk shall also include the gross square footage of above grade or partially subterranean covered parking areas, except where specifically excluded for a particular location under the Land Use Element of the General Plan.

Where a covered parking area is partially subterranean, gross floor area of the covered parking area shall be prorated as follows:

<u>Height of ceiling above natural grade</u>	<u>Portion of parking area counted towards gross square footage</u>
greater than 8 feet	100 %
6-8 feet	75 %
4-6 feet	50 %
2-4 feet	25 %
less than 2 feet	Not counted

Building bulk shall not exceed a factor equal to the permitted floor area ratio plus 0.25 for commercial uses or 0.35 for mixed residential/commercial uses.

Exception. The Planning Director may issue a use permit to approve a project that exceeds the building bulk limits established in this section upon making the findings contained in Section 20.63.040 (C-2) and upon finding that the project is consistent with any applicable design criteria adopted by the City Council.

#### **20.63.070 Conflicts**

In any case where there is a conflict between this chapter and any other portion of the Zoning Code, the provisions of this chapter shall prevail.

#### **20.63.080 Transfer of Development Intensity**

The Planning Commission may, by use permit, provide for the transfer of development intensity from any one or more parcels to any other parcel or parcels, provided that the requirements of this section are met.

- A. Total Gross Floor Area. The total gross floor area permitted on the parcels involved in the transfer of development intensity shall not exceed the total floor area which would otherwise be permitted by this chapter, taking into account the types of uses to be developed.
- B. Maximum Gross Floor Area for an Increased Site. The gross floor area on any increased site shall not exceed 1 times the buildable area of the site or the gross floor area before the intensity transfer, whichever is greater.
- C. Maximum Gross Floor Area for a Decreased site. The maximum gross floor area permitted on a decreased site shall be reduced by amount of the transfer of



development intensity, taking into account the types of land use to be developed and calculated in accordance with Section 20.63.040.

- D. Building Bulk. As provided in Section 20.63.060, the total building bulk permitted on the parcels involved in the transfer of development intensity shall not exceed the total permitted gross floor area plus 0.25 times the total lot area of the parcels.
- E. Variable and Fixed Floor Area Ratios. Transfer of development intensity shall not be permitted between a site having a fixed floor area ratio and a site having a variable floor area ratio.
- F. Nonconforming Developments. Where a transfer of development intensity involves any parcel which does not conform to current intensity limits, the nonconforming condition shall be eliminated and the total gross floor area following the intensity transfer shall be as provided in Subsection B, above.
- G. Distance Between Transfer Sites. The parcels between which development rights are to be transferred shall not be separated by a distance in excess of 1,000 feet unless the parcels are located within the same Planned Community District or a transfer of development intensity between specific sites is expressly provided under the General Plan.
- H. Traffic Study. Depending upon the distance between parcels involved in a transfer of development intensity, a traffic study may be required in order to insure against a net negative effect on the circulation system.
- I. Required Findings. When approving a use permit for a transfer of development intensity, the Planning Commission shall make the following findings in addition to those required under Section 20.91.035 (A):
  - 1. The transfer of development intensity will result in a more efficient use of land or an increase in public visual open space.
  - 2. The transfer of development intensity will result in a net benefit to the aesthetics of the area.
  - 3. The increased development on the site, including above grade covered parking, does not create abrupt changes in scale between the proposed development and development in the surrounding area.
  - 4. The proposed structures and uses, including above grade covered parking, are compatible with the surrounding area.

5. The increased development on the increased site, including above grade covered parking, will not result in significant impairment of public views.
  6. The increased site is physically suitable for the development proposed, including above grade covered parking, taking into consideration site characteristics including, but not limited to, slopes, submerged areas, and sensitive resources.
  7. The transfer of development intensity will not result in a net negative impact on the circulation system.
  8. The projections of traffic to be generated utilize standard traffic generation rates generally applied to a use of the type proposed per City Council Policy L-18.
  9. The proposed uses and physical improvements are such that the approved projects would not readily lend themselves to conversion to higher traffic generating uses.
- J. Legal Assurances. A covenant or other suitable, legally binding agreement shall be recorded against the decreased site assuring that all of the above requirements will be met by the current and future property owners.

**Table 20.63**

Land Use Classification	Specific Land Uses
<b>Reduced FAR Uses (Floor area ratios up to 0.3)</b>	
<u><b>Public and Semipublic Uses</b></u>	
Clubs and Lodges	Social Clubs
<u><b>Commercial Uses</b></u>	
Commercial Recreation and Entertainment	Sports Stadiums and Arenas
	Cinemas
	Theaters
	Cabarets and Nightclubs
Eating and Drinking Establishments	Full-Service, High Turnover
	Take-Out Service

**Table 20.63**

Land Use Classification	Specific Land Uses
	-With Drive-Through/Drive-Up
	Bars and Cocktail Lounges
Food and Beverage Sales	Convenience Markets
Personal Improvement Services	Health/Fitness Clubs
<b>Base FAR Uses (Floor area ratios up to 0.5)</b>	
<b><u>Public and Semipublic Uses</u></b>	
Airport	
Cemetery	
Clubs and Lodges (other than Social Clubs)	
Cultural Institutions	
Day Care, General	
Detention Facilities	
Emergency Health Care	
Emergency Shelter	
Government Offices	
Heliports	
Hospitals	
Maintenance and Service Facilities	
Marinas	
Park and Recreation Facilities	
Public Safety Facilities	
Religious Assembly	
Schools, Public or Private	
Utilities, Major	
Utilities, Minor	
<b><u>Commercial Uses</u></b>	
Adult-Oriented Businesses	
Ambulance Services	

**Table 20.63**

Land Use Classification	Specific Land Uses
Animal Sales and Services.	
Artists' Studios	
Banks and Savings and Loans	
Building Materials and Services	
Catering Services	
Commercial Filming	
Commercial Recreation and Entertainment (other than Sports Stadiums and Arenas, Cinemas, Theaters, and Cabarets and Nightclubs)	
Communications Facilities	
Eating and Drinking Establishments	Full-Service, Low Turnover
	Full-Service, Small-Scale
	Take-Out Service, Limited
	Accessory
Food and Beverage Sales (other than Convenience Markets)	
Funeral and Internment Services	
Horticulture, Limited	
Maintenance and Repair Services	
Marine Sales and Services (other than Boat Storage and Boat Yards)	
Nurseries	
Offices, Business and Professional	
Pawn Shops	
Personal Improvement Services (other than Health/Fitness Clubs)	
Personal Services	
Postal Services	
Printing and Duplicating Services	
Research and Development Services	

**Table 20.63**

Land Use Classification	Specific Land Uses
Retail Sales Secondhand Appliances and Clothing Sales Swap Meets, Recurring Travel Services Vehicle/Equipment Sales and Services	
<b>Maximum FAR Uses (Floor area ratios up to 0.75 or 1.0)</b>	
<b><u>Public and Semipublic Uses</u></b>	
Convalescent Facilities Residential Care, General	
<b><u>Commercial Uses</u></b>	
Marine Sales and Services	Boat Storage Boat Yards
Laboratories	
Visitor Accommodations	
Warehousing and Storage, Limited	
Warehousing and Storage, Self Service	
<b><u>Industrial Uses</u></b>	
Food Processing	
Industry, Custom	
Industry, General	
Industry, Limited	
Industry, Marine-Related	
Industry, Research and Development	
Storage and Distribution	